

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MARCOS PATRIZIO CASA-BEAUX,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

NO.

PETITION TO QUASH IRS
THIRD-PARTY SUMMONS

PETITION TO QUASH SUMMONS

Petitioner Marco Patrizio Casas-Beaux (Petitioner) hereby petitions this court to quash the third-party summons served by the Internal Revenue Service (IRS) upon Bank of America for records relating to the Petitioner's business. In support of the Petition, the Petitioner alleges as follows:

1. Jurisdiction. This proceeding is brought pursuant to the provisions of Title 26 U.S.C § 7609(b)(2), to quash an Internal Revenue Service administration summons. This Court has jurisdiction pursuant to 26 U.S.C §7609(h). The underlying summons was served by the IRS on December 21, 2009. Accordingly, this Petition is timely filed under 26 U.S.C. §7609(b)(2)(A).

**MOTION TO QUASH IRS THIRD-PARTY
SUMMONS-1**

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1 2. Venue. The administrative summons at issue was served upon Bank of
2 America, Legal Notice Department, 800 5th Avenue, Seattle, WA 98104. Accordingly,
3 venue is proper in the Western District of Washington at Tacoma pursuant to 28 U.S.C.
4 § 1391(e)(2).

5 3. Petitioner. The summons requires the giving of testimony on or relating to
6 the production of records made or kept on or relating to the Petitioner, who is an
7 individual and citizen of the United States. The testimony and records sought in the
8 summons relate to the Petitioner, who is identified in the summons. Petitioner is a
9 person entitled to notice of the summons under 26 U.S.C. §7609(a), and to begin
10 proceedings to quash pursuant to 26 U.S.C. §7609(b)(2).

11 4. Respondent. The Respondent is the United States of America. Tracy
12 Madrigal, Employee Number #0443342, is the issuing officer, and is a Revenue Agent
13 employed by the Internal Revenue Service at Honolulu, Hawaii.

14 5. Summons. On December 21, 2009, the IRS served a summons for
15 documents and testimony. The summons requires Bank of America, a third-party record
16 keeper, to testify and to produce all records of the Petitioners Bank of America
17 accounts. The summons attached hereto as **Exhibit A** purports to relate to Federal
18 employment or excise tax liabilities of the Petitioner.

19 6. Enforceability of the Summons.

20 a. Unlike grand jury subpoenas, administrative summonses are not self-
21 enforcing, and Congress has placed federal courts between the IRS and the person
22 summonsed. Therefore, one of the purposes of a motion to quash is to contain the
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25 **MOTION TO QUASH IRS THIRD-PARTY
SUMMONS-2**

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1 threat of IRS overreaching and refuse to enforce abusive summonses. *See United*
 2 *States v. Bisceglia*, 420 U.S. 141 (1975), *Reisman v. Caplin*, 375 U.S. 440 (1964), and
 3 *Schultz v. Commissioner*, 395 F.3d 463 (2d Cir. 2005).

4 b. The validity of a summons is governed by the standards establishing
 5 “good faith” and set forth in *United States v. Powell*, 379 U.S. 48 (1964). The IRS must
 6 show that (1) its request is being conducted for a legitimate purpose, (2) its request is
 7 relevant, (3) it does not already have the information requested in its possession, and
 8 (4) all required administrative procedures have been followed. Therefore, the courts
 9 may scrutinize a summons to determine whether the IRS seeks information relevant to
 10 a legitimate investigative purpose and may determine not to enforce a summons. See
 11 *United States v. Goldman*, 637 F.2d 664, 667 (9th Cir. 1980). The instant summons was
 12 issued on December 10, 2009, yet a letter to resolve the matter was issued December
 13 14, 2009. There was never a real desire to resolve the issue informally expressed by
 14 the IRS. This fact is evidence that the summons was issued in bad faith.

15 c. The Petitioner challenges the validity of the summons issued by the IRS
 16 for many reasons. First, the summons is being conducted for an illegitimate purpose
 17 and is therefore unenforceable. The Supreme Court has held that a summons issued
 18 for an improper purpose should not be enforced because such a summons constituted
 19 an abuse of process. *See United States v. Powell*, 379 U.S. 48 (1964). The Petitioner
 20 seeks to quash this summons because the summons requests irrelevant information
 21 under the guise of the IRS’s examination of the Petitioner’s year 2006-2008
 22 employment and excise tax obligations. Further, the petitioner has been in Chapter 11
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 25 **MOTION TO QUASH IRS THIRD-PARTY
 SUMMONS-3**

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1 Bankruptcy since 2008. The IRS is aware of the Petitioner's petition for bankruptcy
2 relief. As such the IRS has had access to the Petitioner's financials through The United
3 States Bankruptcy proceedings. The information now being requested gives no further
4 relevant revelations.

5 d. Upon information and belief, the IRS is attempting to obtain information for
6 an audit unrelated to the Petitioner's examination. The IRS summons requests
7 documents relating to bank information including: signature cards; corporate resolution;
8 statements; loan agreements and checks. In an attempt to collect information regarding
9 unpaid employment and excise taxes, the IRS has improperly issued this summons
10 under the false label that the information relates to the Petitioner's tax liabilities. The
11 items requested do not give light as to whether the liabilities have been paid nor do the
12 items vitiate the fact that the Petitioner has made an effort to informally resolve the
13 matter. This ruse constitutes an abuse of process.

14 e. The IRS's summons also should be quashed because it is irrelevant. The
15 standard of relevancy for records, as articulated by the U.S. Supreme Court is, that
16 "[r]ecords that illuminate any aspect of the [taxpayer's] return" are considered relevant.
17 Under this standard of relevancy, the IRS's summons fails. The bank information
18 requested does not illuminate any aspect of the taxpayer's failure to pay his tax
19 obligation nor does address his current attempt to pay. Signature cards, corporate
20 resolutions and loan agreements and checks issued, do not have bearing on the
21 calculation of employment taxes nor excise taxes. Any such documents would not
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25 **MOTION TO QUASH IRS THIRD-PARTY
SUMMONS-4**

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1 illuminate any aspect of the Petitioner's business's affairs. The IRS already knows
2 Petitioner's tax liability.

3 f. Courts have required a greater showing of relevance when a summons is
4 issued to a third party. See *United States v. Harrington*, 388 F. 2d 520 (2d Cir. 1968).
5 The government must show that a requisite nexus existed between the taxpayer and
6 the records of another's affairs before enforcing a summons. See *United States v.*
7 *Arthur Young & Co.*, 677 F. 2d 211, 216 (2d Cir. 1982). The Second Circuit has applied
8 this closer scrutiny when the third party is a "stranger" to the taxpayer's affairs. Bank of
9 America is a steward of records relating to the Petitioner's business, but it does not
10 have any knowledge of the internal workings of the business or the number of
11 employees employed by the petitioner. The Bank cannot contextualize the financial
12 information it holds; it is merely a repository. The Ninth Circuit Court of Appeals
13 previously ruled that an order to quash a summons on relevancy grounds was proper
14 because the summons demanded client-identifying information that was not relevant to
15 the correctness of the taxpayer's return. See *Tedder & Associates, Inc. v. States*, 77 F.
16 3d 1166 (9TH Cir. 1996).

17 g. An IRS summons is also unenforceable if it is vague, overbroad or overly
18 burdensome. The IRS summons to Bank of America is overbroad for the reasons
19 stated above. Additionally, the IRS's summons is overbroad because it requests
20 documents that do not involve employees and business dealings. *United States v.*
21 *Darwin Construction Co.*, 632 F.Supp. 1426, 1430 (D. Md. 1986).

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25 **MOTION TO QUASH IRS THIRD-PARTY
SUMMONS-5**

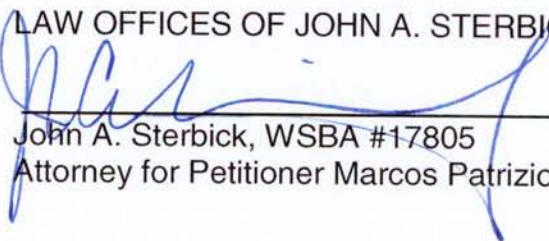
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1 For the reasons stated above, the summons is not enforceable, and should be
2 quashed.

3 WHEREFORE, Petitioner requests that this Court enter an order quashing the
4 summons, award Petitioner's attorneys' fees and costs incurred in connection with this
5 Petition, and for such other relief as is just and equitable.
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8 DATED this 12th day of January, 2010.

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10 
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12 Attorney for Petitioner Marcos Patrizio Casas-Beaux
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25 **MOTION TO QUASH IRS THIRD-PARTY
SUMMONS-6**

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